

Recent Developments

Law on Island Protection of People's Republic of China

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1 Introduction

The People's Republic of China is a major coastal State with a coastline of some 18,000 km.¹ There are more than 6,500 islands under China's jurisdiction (larger than 500 square meters), including around 400 inhabited islands.² In addition, 10,000 of uninhabited islands are also peacefully situated in sea areas of China, which are sometimes easily ignored by the public. Obviously, islands are of fundamental importance for the economic development as well as the national security of China. Since the beginning of the open door policy in the 1980s, China gradually created a comprehensive domestic legal regime with the intention to protect its interests in sea areas under its jurisdiction. Those efforts include, inter alia, China's Marine Environmental Protection Law (adopted in 1982 and amended in 1999), the Law on the Territorial Sea and the Contiguous Zone (1992), the Law on the Exclusive Economic Zone and the Continental Shelf (1998) as well as the Law on the Use and Administration of Sea Areas (2001). Meanwhile, China also ratified the United Nations Convention on the Law of the Sea (LOS) in 1996 and most of the international conventions that are concluded under the auspices of the International Maritime Organization (IMO). However, although island protection has been addressed by the China Ocean Agenda 21 early in 1996, China lacked legal instruments for a long time.³

According to the National People's Congress, the adoption of the Island Protection Law (IPL) is necessary and in urgent need. There was no clear and specific legislation governing islands and the local environment of islands, inhabited or uninhabited. Moreover, islands disappeared due to uncontrolled construction or destruction in coastal areas, such as sea reclamation connecting islands with the continent. One investigation claims that 48 islands have disappeared in the Liao Ning province in recent decades, while in the Fu Jian province the number is 83.⁴ Therefore, a team was convened by the Resources

and Environmental Protection Committee of the National People's Congress in 2003 in order to draft the IPL. Finally, the IPL entered into force on 1 March 2010; it is the most important Chinese law focused on the protection of islands.

This paper first demonstrates the main content of the IPL and then reveals potential legal implications for the future, in the context of international law, especially the LOSC.

2 Content

The IPL contains 6 chapters with 58 articles.

Chapter 1 provides some general articles for island protection in China. As stated in Art. 1, the IPL was enacted with four objectives: 1) protection of the ecosystem of islands and their marine environment; 2) reasonable use of natural resources; 3) national interest; and 4) promotion of sustainable development. Following Art. 121 of the LOSC, an island in the IPL means a naturally formed area of land, surrounded by water, which is above water at high tide, including inhabited and uninhabited islands (Para. 1, Art. 2). Before the adoption of the IPL, it has long been disputed whether uninhabited islands are state-owned or not. Now it is clear that uninhabited islands belong to the state (Art. 4), clarifying Art. 9 of the Constitutional Law of China.⁵ In terms of implementation and enforcement, the State Oceanic Administration (SOA) is authorised to play the leading role (Art. 5). Moreover, together with other competent departments, SOA shall identify all islands and publish their names (Art. 6).

Chapter 2 is about protection of islands through planning. It was missing in the Chinese legal system, resulting in disordered and uncontrolled use of islands. Four levels of planning will be established by competent departments (National planning, coastal provincial planning, coastal city planning and uninhabited sea islands planning) (Art. 9, 10, 11). Furthermore, a national islands investigation system

¹ Erik Franckx (ed), Vessel-source pollution and coastal State jurisdiction: the work of the ILA committee on coastal State jurisdiction relating to marine pollution (1991-2000) (Kluwer Law International, The Hague 2001) 201.

² China Ocean Agenda 21, p. 18 (in Chinese).

³ In 2003, the Rule on the Use and Protection of Uninhabited Islands was jointly established by State Oceanic Administration, Ministry of Civil Affairs and People's Liberation Army General Staff Department, which is a low level legislation in the Chinese legal system.

⁴ An interpretation of China's Law on Island Protection (draft), Legal Committee, National People's Congress,

⁵ <http://www.npc.gov.cn/huiyi/fzt/hdbhf/2009-06/27/content_1508583.htm>, accessed 28 April 2010 (in Chinese).

Para. 1, Art. 9, Constitutional Law of P. R. China: "Natural resources, including minerals, rivers, forests, mountains, grasslands, uncultivated lands and tidal flats, belong to the State, which means they are owned by all people of China. However, in exceptional cases provided in domestic legislation, forests, mountains, grasslands, uncultivated lands and tidal flats can be owned by units".

and an information management system are created (Art. 14, 15).

Chapter 3 is considered to be the most important chapter in the IPL. It provides detailed measures for island protection, including inhabited, uninhabited as well as islands for special use. Generally, it is forbidden to change the coastline of islands within marine nature reserves established by Art. 20, 21, 22 of the Chinese Marine Environment Protection Law. Moreover, it is also prohibited to damage coral and coral reefs as well as fell mangroves around islands (Para. 2, Art. 16). Scientific research is supported but must take place without damaging the environment (Art. 18). To maintain the biodiversity of islands, species on the islands will be registered by the government (Art. 19).

For inhabited islands, existing domestic legislation, such as urban and suburb planning, environmental protection, land management, use of sea areas, water resources as well as forest protection, are applicable (Art. 23). Use of renewable energy (wind, oceanic and solar energy) is encouraged (Para. 2, Art. 24). In addition, prohibited and restricted sea areas for economic development should be designated around islands (Para. 3, Art. 24). Construction of buildings or exploitation of sand on the beaches of inhabited islands is strictly controlled (Art. 26). Moreover, sea reclamation is also restricted in order to prevent altering the coastline of inhabited islands (Art. 27).

With respect to uninhabited islands, there will be no economic development without approval. Given the vulnerability of the ecosystems in most uninhabited islands, the application for approval is very strict (Art. 30). Since it is now clear that uninhabited islands are state-owned, applicants who are granted permission by SOA to develop the uninhabited islands must pay an exploitation fee. However, for public use (military use, education, prevention of natural disasters, public infrastructure, geology and meteorology), payments are waived (Art. 31). Without approval from SOA, it is forbidden to exploit stones, sand, fell wood as well as to start construction, tourism and so on (Art. 28). In order to protect the marine environment, solid wastes resulting from activities on uninhabited islands are not allowed to be disposed of on the islands or dumped into sea areas (Para. 2, Art. 33).

There are islands for special use, meaning islands which are used for appropriate points of straight baselines (basepoints) for national defense or within marine nature reserves (Art. 36). In 1996, the Chinese Government published its "Declaration on the Baseline of P. R. China", which states part of its continental baseline as well as the baseline of Xisha Islands (Paracel Islands). As declared, 76 of 77 basepoints are on islands, while 66 of 76 are on

uninhabited islands.⁶ Thus, islands are undoubtedly important for the sovereign interests of China. Special protected areas around those islands will be designated, in which any construction or other activity that may potentially change current situation is completely prohibited (Art. 37). Moreover, basepoints will be marked on islands. Any movement or damage is illegal under the IPL (Para. 3, Art. 37) and will be punished by administrative measures (Art. 51).

Chapters 4, 5 and 6 focus on implementation, liability and miscellaneous provisions. The IPL provides that SOA must be in charge of the protection of uninhabited islands. Moreover, SOA and China Sea Supervision, which is the enforcement branch of SOA, are authorised to deal with the protection of the marine environment around islands (Art. 41). The IPL, with the reference to the MEPL and the Chinese Law on the Use and Administration of Sea Areas, set detailed administrative measures in case of violation. Furthermore, a link with criminal sanctions is also created (Art. 55). It is noted that Art. 56 expands the application of the IPL to include low-tide elevations.

3 Legal implications

Generally speaking, the objective of the IPL is the environmental protection of islands and the marine environment around them under China's jurisdiction. As shown above, most provisions of IPL focus on the environment, providing detailed protective measures, liability as well as competent departments in charge of monitoring compliance for the marine environmental protection.

However, bordering with the East China Sea, the Yellow Sea and the South China Sea, China has several sovereignty disputes about islands with its neighbors. Thus, the IPL is a concern for the outside world.⁷ In the East China Sea, there a dispute between China and Japan on the sovereignty of Diaoyutai islands (Chinese name)/Senkaku Islands (Japanese name). The islands are currently controlled by Japan but claimed by Art. 2 of Law on Territorial Sea and Contiguous Zone of China. Furthermore, China also has a dispute with South Korea on the sovereignty of Suyan Rock (Chinese name)/Leodo Rock (Korean name) in the East China Sea. South Korea has already built a so-called 'scientific research centre' on the Rock that is considered by China as located in its EEZ. In the South China Sea, China has sovereignty disputes over several islands with Southeast Asian countries, especially Vietnam, Malaysia and Philippines. According to the regime of islands in the LOSC (Art. 121), an island has its own territorial sea,

⁶ H Jiang, 'Basepoints: the starting point for maritime claims of coastal States', (2009) 5 World Knowledge 65 (in Chinese).

⁷ E.g. Vietnam protests China's law on island protection, <<http://www.intellasia.net/news/articles/governance/111283454.shtml>>, accessed 21 May 2010.

continental shelf and EEZ, while a rock which cannot sustain human habitation or economic life of its own can only have a territorial sea. Therefore, islands and rocks are invaluable for coastal states, not only for economic reasons (oil or natural resources in the sea areas around) but also for strengthening maritime delimitation claims.

Compared to the state practice of its neighboring countries, China's sovereignty claims over disputed islands are more or less done by declarations without real action. After the adoption of the IPL, SOA is authorised and obliged by the IPL to protect the marine environment of sea areas around China's islands, give approval to individuals and companies who want to develop uninhabited islands, to patrol in sea areas around islands in order to supervise the protection of the marine environment, to impose administrative measures for violations of the IPL and so on. Consequently, it is true that the IPL may provide a domestic legal basis for competent departments of China, e.g. SOA, to control and manage all islands within China's jurisdiction, including those disputed islands. However, the enforcement, when it comes to disputed islands, can potentially also create new international disputes.

4 Conclusion

Now that the IPL has been adopted, China has an advanced and detailed domestic legislation to protect its islands for the first time. The IPL mainly focuses on environmental protection, which aims to change uncontrolled development and deterioration of the islands' environment. However, it also can be a legal tool for strengthening China's maritime claims/sovereignty over disputed islands with neighbouring countries.